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7 *Successor Receiver*

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE  
16 RIVER ADVISORS, LLC; SRA  
17 MANAGEMENT ASSOCIATES,  
18 LLC; FRANK GREGORY  
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III  
22 LLC; FELIX INVESTMENTS, LLC;  
23 MICHELE J. MAZZOLA; ANNE  
24 BIVONA; CLEAR SAILING  
25 GROUP IV LLC; CLEAR SAILING  
26 GROUP V LLC,

27 Relief Defendants.  
28

Case No. 3:16-cv-01386-EMC

**FOURTH INTERIM ADMINISTRATIVE  
MOTION FOR AN ORDER PURSUANT TO  
LOCAL RULE 7-11 FOR THE APPROVAL  
OF FEES AND EXPENSES FOR THE  
SUCCESSION RECEIVER AND COUNSEL  
FROM OCTOBER 1, 2019 THROUGH  
DECEMBER 31, 2019; FOR THE  
APPROVAL OF FEES FOR MILLER  
KAPLAN ARASE LLP FROM AUGUST  
2019 THROUGH DECEMBER 31, 2019;  
AND FOR THE APPROVAL OF FEES FOR  
SCHINNER & SHAIN THROUGH  
DECEMBER 31, 2019**

Date: No Hearing Set  
Time: No Hearing Set  
Judge: Edward M. Chen

**I. Relief Requested**

Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of \$50,187.30<sup>1</sup> for services rendered from October 1, 2019 through December 31, 2019, and reimbursement of expenses in the amount of \$27.00. Diamond McCarthy seeks compensation in the amount of \$12,550<sup>2</sup> for services rendered from October 1, 2019 through December 31, 2019. Miller Kaplan Arase LLP (“Miller Kaplan”) seeks compensation in the amount of \$42,465.60<sup>3</sup> for the period through December 31, 2019. Schinner & Shain seeks compensation in the amount of \$18,806.20 for the period through December 31, 2019, against which the \$10,000 retainer shall be applied, leaving a balance of \$8,806.20 to be paid.<sup>4</sup> This motion is supported by the Declarations of the Receiver, Christopher Sullivan, Julia Damasco and Fred Koenen.

The Receiver has conferred with counsel for the Securities and Exchange Commission (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the Motion. Counsel for the SRA Investor Group has declined to take a position on the Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of judgment against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

**II. Previous Fee Motions**

This is the fourth interim fee motion by the Receiver and her counsel. On June 6, 2019, the Court entered an order approving \$46,287.00 in fees and \$3,030.33 in costs to the Receiver, and \$16,802.80 in fees and \$524.67 in costs to Diamond McCarthy for services rendered from the inception of the Receiver’s activities through March 31, 2019 (20% of the fees were held back until further order of the Court) (Dkt. 485). On August 13, 2019, the Court entered an order approving the second interim fee motion (Dkt. No. 515) for services rendered from April 1, 2019 through June 30, 2019. The Court awarded the Receiver fees in the amount of \$85,735.50 and reimbursement of

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<sup>1</sup> The Receiver has agreed to a holdback of 30% of this amount and therefore request authority to pay \$35,131.11.

<sup>2</sup> Diamond McCarthy has agreed to a holdback of 30% of this amount and therefore requests authority to pay \$8,785 at this time.

<sup>3</sup> Miller Kaplan has agreed to a holdback of 20% of this amount and therefore requests authority to pay \$33,972.48 at this time.

<sup>4</sup> Schinner & Shain has agreed to a holdback of 20% of this amount and therefore seeks authority to be paid \$15,044.96, of which \$10,000 has already been paid pursuant to the retainer.

1 expenses in the amount of \$185.93 and awarded Diamond McCarthy fees in the amount of \$30,625.00  
2 and reimbursement of expenses in the amount of \$1,924.16 (fees were subject to 20% hold back). On  
3 November 22, 2019, the Court entered an order approving the third interim fee motion (Dkt. No. 537)  
4 for services rendered from July 1, 2019 through September 30, 2019. The Court awarded the Receiver  
5 fees in the amount of \$40,349.40 and reimbursement of expenses in the amount of \$542.73 and  
6 awarded Diamond McCarthy fees in the amount of \$4,450.90 and reimbursement of expenses in the  
7 amount of \$131.35 (fees were subject to 20% hold back). The Court also approved \$5,280.50 in fees  
8 for Sherwood Partners and \$3,540.50 in fees for Grobstein Teeple LLC. The Receiver has paid the  
9 amounts authorized for payment, net of the holdbacks.

### 10 **III. Case Status**

11 The Receiver has continued to move forward the process of finalizing a distribution plan.  
12 At the request of the SRA Investor Group, the Receiver has obtained supplemental information and  
13 advice regarding the distribution plan. That advice has reaffirmed the tax consequences of the plan  
14 as identified in the plan proposed by the Receiver in June 2019. The refinement of the facts relating  
15 to the assets and claims of the estate, however, has also caused the Receiver to consider the wisdom  
16 of pursuing a liquidation plan in lieu of the plan promoted by the Investor Group so as to simplify  
17 and streamline the issues and to mitigate ongoing administrative costs. The Receiver anticipates  
18 that these issues will continue to be part of the discussion with the Court in connection with the  
19 distribution plan.

20 The Receiver has also made significant progress in resolving claims issues and settling  
21 disputes over claims. The Receiver continued discussions with Fortuna Funds which resulted in the  
22 amendment of the Fortuna claim to remove certain claims asserted against the estate. There may be  
23 a few lingering objections to claims relating to guaranty claims, but otherwise the claims  
24 administration has largely been completed.

25 The Receiver also actively continued settlement discussions with Equity Acquisition  
26 Company Ltd. ("EAC") regarding the resolution of all outstanding issues between the receivership  
27 estate and EAC. The Receiver reached a settlement with EAC that was documented and signed by  
28 the parties.

As of December 31, 2019, the receivership estate presently has \$40,341.82 in cash on hand in a checking account, \$163,698.80 in money market account and \$502,313.33 in the segregated Anna Bivona funds. There are known accrued expenses and unpaid expenses of \$116,179.03 and holdbacks of \$180,517.57. Attached to the Declaration of the Receiver as Exhibit “1” is a financial summary showing the cash status of the estate as of December 31, 2019. Funds in the amount of \$55,335<sup>5</sup> representing first and second quarter fees and expenses have been disbursed during this period. The Standardized Fund Accounting Report required by the SEC for the fourth quarter 2019 is attached to the Receiver’s Declaration as Exhibit “2.”

#### IV. The Receiver’s Fee Request

As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has established separate billing categories for services provided to address legal issues (2598-11- Case Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and Recovery; 2598-16- Plan Implementation) and a separate category for administrative services provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating significant savings to the estate. The billing statements itemizing the services provided and expenses incurred are contained in Exhibit “3” attached to the Declaration of the Receiver. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	17.70	\$6,042.80	\$27.00
Administrative Services	8.40	\$1,092.00	n/a
Claims Administration/Objection	4.90	\$2,082.50	n/a
Asset Analysis and Recovery	31.50	\$13,387.50	n/a
Plan Implementation	70.10	\$27,582.50	n/a
<b>TOTAL</b>		<b>\$50,187.30</b>	<b>\$27.00</b>

<sup>5</sup> This sum includes a \$10,000 retainer paid in October 2019 to Schinner & Shain.

**V. Diamond McCarthy's Fee Request**

As detailed in the Declaration of Christopher Sullivan, Diamond McCarthy has established the following billing categories for tasks performed from October 1, 2019 through December 31, 2019 (2622-11- Case Administration; 2622-13- Plan Implementation; 2622-15 Asset Analysis and Recovery). The billing statements itemizing the services provided and expenses incurred are attached as Exhibit "4" to the Sullivan Declaration. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	6.20	\$2,507.50	n/a
Plan Implementation	23.20	\$9,354.00	n/a
Asset Analysis and Recovery	2.0	\$689.00	n/a
<b>TOTAL</b>	<b>31.40</b>	<b>\$12,550.00</b>	

**VI. Miller Kaplan Fee Request**

As detailed in the Declaration of Julia Damasco, Miller Kaplan has incurred \$42,465.60 in fees in connection with its tax advisor services, which fees are described in the detailed billing statements are attached as Exhibit "5" to the Damasco Declaration. The Receiver proposes to pay Miller Kaplan \$33,972.48, and \$8,493.12 shall be held back subject to further Court approval. The services performed by Miller Kaplan were necessary in obtaining court approval of a plan.

**VII. Schinner & Shain Fee Request**

Attached as Exhibit "6" to the Declaration of Fred Koenen are the billing statements itemizing the amounts owed and services performed by Schinner & Shain through December 31, 2019. Schinner & Shain performed services for a total of \$18,806.20. The Receiver proposes to pay Schinner & Shain \$5,044.96, and Schinner & Shain may apply the \$10,000 retainer previously paid to the firm. The sum of \$5,044.96 of the approved fees shall be held back as the agreed 20% hold back subject to further Court approval. Schinner & Shain provided necessary and beneficial securities law services to the Receiver.

**WHEREFORE**, the Receiver seeks entry of an order granting this motion in all respects.

Dated: February 14, 2020

By: /s/Kathy Bazoian Phelps  
Kathy Bazoian Phelps, Receiver